

4. DGS CONTRACT APPROVAL

4.00 • INTRODUCTION

This chapter presents the policies and procedures related to obtaining contract approval from DGS/OLS. Exemptions from such approval are also covered.

PCC §§ 10295, 10297, and 10335 are the primary legal authority for DGS/OLS review and approval of contracts. GC § 14615 is the legal authority for the supervision of the state's business policies, and GC § 14616 is the legal authority for some exemptions from DGS/OLS approval of contracts.

Individual agencies and programs may have specific statutes affecting their particular contracting programs.

4.01 • TABLE OF CONTENTS

(Rev 10/98)

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4.02 • RESPONSIBILITY FOR CONTRACT APPROVAL

(Rev 4/04)

- A. Each state agency is responsible for making sure that its contracts comply with applicable legal requirements and is based on sound business practices. DGS/OLS provides the final approval if required by law.
- B. In some instances additional approvals may be needed, such as those from the Attorney General, State Personnel Board, State Fire Marshal, DGS/Office of Risk and Insurance Management, or other DGS offices.
- C. Contract approval by DGS serves to assist state agencies by:
 1. Ensuring effective compliance with applicable laws and policies.

(4.02 C. Responsibility for Contract Approval - continued)

2. Conserving the fiscal interests of the state and preventing improvident acts.
3. Applying contract knowledge and legal expertise prior to final approval.

D. Remedies and Penalties:

1. PCC § 10420 - Every contract or other transaction entered into in violation of Chapter 2 of the Public Contract Code is void, unless the violation is technical or non-substantive.
2. PCC § 10421 - Civil action may be brought in Superior Court to determine a violation of Chapter 2 of the Public Contract Code. If a violation is found the contract shall be void.
3. PCC § 10422 - 23 - Any state employee or person contracting with the State who corruptly performs an official act or corruptly permits the violation of any contract made under Chapter 2 of the Public Contract Code is guilty of a felony. PCC section 10424 provides that a violation of section 10423 may make the employee or the person contracting with the State liable to the State for double the amount the State may have lost.
4. PCC § 10425 - Willful violation of any other provision of Chapter 2 of the Public Contract Code shall constitute a misdemeanor.

4.03 • CONTRACTS REQUIRING DGS/OLS APPROVAL**(Rev 11/04)**

DGS/OLS has statutory authority under several sources to approve contracts. An explanation of the major sources of that authority is presented in Table 4.1.

Table 4.1

Contract Description	Approval Authority	Applicability of Approval Authority (All contracts unless specifically exempted)
All contracts by any state agency	PCC § 10295	§ 10295(a) The hiring or purchase of equipment, supplies, materials, or elementary school textbooks § 10295(b) Services, whether or not the services involve the furnishing or use of equipment, materials, or supplies or are performed by an independent contractor § 10295(c) The construction, alteration, improvement, repair, or maintenance of property, real or personal, or § 10295(d) The performance of work or services by the state agency for or in cooperation with any person, or public body, are void unless and until approved by the department.
All contracts whether or not subject to competitive bidding	PCC § 10297	
Services contracts	PCC § 10335	All services except: <ul style="list-style-type: none"> • Public works • A&E contracts • Contracts expressly exempted from § 10295 • Contracts of less than \$5,000 • Contracts of less than \$5,000 for per diem or travel only • Personal property maintenance or repair

(4.03 Contracts Requiring DGS/OLS Approval – continued)

Table 4.1 (cont.)

Consultant services contracts	PCC § 10335	Applies to consultant as defined by PCC § 10335.5
Contracts statutorily exempted	Varies	Prerequisites of exemption statute must be complied with
Interagency agreements	GC § 11256	Contracts with other state agencies

Some specific types of contracts which would require DGS/OLS review/approval, regardless of dollar amount, include but are not limited to the following:

1. Contracts that limit the contractor's liabilities or require the state to indemnify or to hold the contractor harmless
2. Contracts that require the state to assume liabilities beyond the state's control
3. Contracts that provide for advance payment for services or rentals
4. Any provision creating a contingent liability against the state (e.g., those vendors' printed rental contracts obligating the user of rented equipment to serious contingent liabilities)
5. Any agreement for moving services, regardless of form used (including, but not limited to, subscription agreements, purchase orders, TRAs, etc.) (GC § 14920)
6. Any hazardous activity such as found under SCM 3.12.

4.04 • CONTRACTS NOT REQUIRING DGS/OLS APPROVAL**(Rev 10/05)**

The law requires all contracts to be approved by DGS/OLS unless the contract is exempt from approval (PCC § 10295).

A contract is exempt from DGS/OLS approval if:

1. It is specifically exempt from approval by statute; or
2. It is exempt from approval because of the monetary value of the contract by PCC § 10351, or GC § 14616; or
3. It has been exempted from approval by an exemption letter issued by the DGS/OLS; or
4. It is a federally funded grant exempted based on opinion of the Attorney General.
5. Standard contract exemptions:
 - a. \$50,000 and under for interagency agreements
 - b. \$50,000 and under for all other contracts ~~GC § 14616~~

Although these contracts do not require DGS/OLS approval, review/approval services are available on request for any contract, regardless of value.

4.05 • APPROVAL OF EMERGENCY CONTRACTS**(Rev 1/01)**

"Emergency" is defined in PCC § 1102 as "a sudden, unexpected occurrence that poses a clear

(4.05 Approval of Emergency Contracts – continued)

and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.”

The law recognizes exceptions from competitive bidding in emergencies (PCC §§ 1102 and 10340(b)(1)), but no exception is provided from contract approval. The basic policy is to respond to the emergency as circumstances demand and then to obtain the formal approval(s) as soon as practicable. However, before the start of the work, the contract must be verbally authorized by someone with authority at the agency to initiate a contract in such situations. If there is any question about whether the circumstances qualify as an emergency, DGS/OLS should be contacted as soon as possible. The contract will be processed on an expedite basis as discussed in SCM 4.08 C.

4.06 • CERTAIN FEDERALLY FUNDED GRANTS EXEMPT FROM APPROVAL BY DGS
(Rev 11/99)

The Attorney General (AG) has opined that certain federally funded grants are not subject to approval by DGS/OLS. The AG opinions are based primarily on the nature of a grant compared with a services contract as described in the law. (See 58 Ops.Cal.Atty.Gen 586 [1974] and 63 Ops.Cal.Atty.Gen. 290 [1980].)

The AG opinions present the following factors as relevant to whether a contract qualifies as an exempt grant:

- A. The grant must fall under specific statutory authority. Without specific statutory authority, a grant is an illegal gift of public funds.
- B. The grant must not benefit the state. Even if the award was made subject to an authorized grant program, if the agreement provides a benefit to the state, it is not exempt from approval (unless exempted by specific statute). Common benefits are as follows:
 - 1. Services are provided to the state.
 - 2. The state obtains title to equipment, copyrights, or patents.
 - 3. The state is relieved from a statutory obligation to perform the services (usually services to the public).
- C. Performance under the grant must not be controlled by the state. The grant must fund the grantee's program, not the state's program.

4.07 • EXEMPTION LETTERS

(Rev 3/03)

Exemption letters are issued by DGS and define contracts exempt from DGS/OLS review. Exemptions beyond the general delegation limits described in SCM 4, are outlined in Table 4.2.

Exemption Letters
Table 4.2

Factors	Authority	General Considerations
All services, consultant services, and interagency agreements	PCC § 10351 (Services and Consultant Services) GC § 11256 (Interagency Agreements)	<ul style="list-style-type: none"> • Up to \$75,000 • Agency officer responsible for contracting program • Written policies and procedures • Management system • Contract training program • Audit every two years • Reporting procedures
Specific program or type of contract, usually repetitive in nature	GC § 14616	<ul style="list-style-type: none"> • Limited to \$50,000 • Contract format is usually a part of the exemption • Requires certification by the agency

Application for an exemption letter should be made by written request to the Director of DGS.

4.08 • OBTAINING APPROVAL FROM DGS/OLS

(Rev 10/05)

Note: See Chapter 4 appendix for sample OLS checklist.

A. Required Supporting Documents

1. Contract Transmittal form, ~~STD 15 or~~ STD 215. This form must contain an explanation sufficient to afford a basis for approval as to:
 - a. The purpose and necessity or desirability of the contract or interagency agreement;
 - b. The reasonableness of the price or cost of the services (not applicable to I/As except those with UC or CSU); and
 - c. Any other relevant information necessary to understand the proposed transaction.

The form ~~STD 15 or~~ STD 215 shall also contain the name and telephone number of the contact person in case questions arise or additional information is needed by DGS/OLS reviewing attorney. The contact person is the staff member who regularly deals with DGS/OLS on contract matters. A copy of the ~~STD 15 or~~ STD 215 will be retained on file at DGS/OLS.

- d. Within ten working days of an award, an agency must report the award of each contract over \$5,000 to the Department of Fair Employment and Housing (DFEH), including contracts with the University of California. Information required is specified in 2 CCR § 8117.5. (This requirement does not apply to contracts with other California state agencies or with the federal government.) Use STD 16 for reporting purposes. Check the box on the reverse side of ~~STD 15 or~~ the STD 215 that this requirement has been complied with.

(4.08 A. Obtaining Approval from DGS/OLS - continued)

2. Payee Data Record form STD 204. This form must be completed by the vendor (except for state and other governmental entities). The form should accompany the contract to final approval or a note should be made of it on ~~STD 15~~ or the STD 215. The STD 204 must be retained in the agency's accounting or business affairs office.
3. Bidding documents (i.e. IFB/RFP). If the contract was awarded by competitive bid, all bids or proposals received, together with the documents comprising the IFB or RFP and related correspondence, must accompany the contract to final approval. If fewer than three bids or proposals were received, document the awarding agency's efforts to obtain at least three competitive bids.
4. The California State Contracts Register ad. The ad as well as all other ads used to advertise the contract must accompany the contract to final approval. A printout of the electronic version of the CSCR ad or a copy of the confirmation printout is sufficient substantiation of that ad.
5. A Statement of Compliance form, STD 19. This form must accompany bids or proposals submitted by contractors for nonexempt state contracts of \$5,000 or more. See 2 CCR § 8113. State agencies may attach a copy of the STD 19 to their solicitations for bids or proposals. The STD 19 must be fully executed by the bidder and returned to the agency with the bid before the bid deadline.
 - a. Agencies may include the following provision in bid forms in lieu of using STD 19:

Statement of Compliance

The prospective contractor's signature affixed hereon and dated shall constitute a certification, under the penalty of perjury under the laws of the State of California, that the bidder has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 (a - f); and of Title 2, CCR Section 8103.

- b. Agencies may include the following provision in the contract in lieu of using STD 19 in nonbid contracts:

Statement of Compliance

The contractor's signature affixed hereon shall constitute a certification, under the penalty of perjury under the laws of the State of California, that the contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 (a-f); and of Title 2, CCR Section 8103.

Note: An offer by a contractor to enter into a contract on a noncompetitive basis, when permitted, cannot be accepted unless such contractor furnishes a Statement of Compliance as a part of its final offer.

- c. The Statement of Compliance is included in the document, "Contractor Certification Clauses" (CCC), found on the OLS website.
6. Drug-Free Workplace Certification. State contractors and grantees must certify that they will provide a drug-free workplace by signing a Drug-Free Workplace

(4.08 A. 6 Obtaining Approval from DGS/OLS - continued)

Certification STD 21. The Drug Free Workplace Certification is included in the document, Contractor Certification Clauses (CCC), found on the OLS website.

Note: The Drug-Free Workplace wording can be used in the terms and conditions of a contract that is to be signed by the contractor.

7. The Expatriate Corporation, Domestic Partnerships and Sweatfree Code of Conduct Certifications. These certifications are included in the Contractor Certification Clauses (CCC), and found on the OLS website.
8. DVBE goals or good faith effort documentation. When participation goals are required in the bidding documents, as discussed in SCM 8, documentation supporting the commitment to meet the goals or performance of a good faith effort must accompany the contract.

B. Number of Copies

1. Under the current standardized contracting process, when approval by DGS/OLS is required, the following information should be submitted according to the chart below:

STD 215	For all agreements and amendments: Send two (2) copies.
STD 213	Two (2) originals of the STD 213 face sheet alone One (1) copy of the STD 213 face sheet, attached to a complete copy of the agreement, and all relevant back up. One (1) copy of the STD 213 face sheet alone
STD 213-A	Two (2) originals of the STD 213A face sheet alone One (1) copy of the STD 213A face sheet attached to a complete copy of the agreement, and any relevant back-up One (1) copy of the STD 213A face sheet One reference copy of the original Agreement, along with copies of all prior amendments, regardless of whether or not they were exempt from DGS-OLS review.

(NOTE: At least two (2) copies of the STD 213 or 213A must bear original signatures. Stamped replicas of signatures are not acceptable as original signatures. No more than four copies of the agreement will be signed by DGS/OLS.)

After approval by DGS/OLS, the copies will be distributed as follows:

- a. One copy **of the STD 215 and STD 213 or 213A face sheet** will be forwarded to the State Controller's office. This step is not required for contracts submitted by district agricultural associations or for contracts in which payment is not from funds in the state treasury.
- b. DGS/OLS will retain only one copy of the **STD 215 and** STD 213 or 213A face sheet. In some instances, at the discretion of DGS/OLS, a complete agreement will be retained at OLS.

(4.08 B 1. Obtaining Approval from DGS/OLS - continued)

- c. The remaining two copies of the STD 213 or 213A face sheets with original signatures will be returned to the submitting agency.

Note: See SCM 5.04 for further information and direction concerning the ~~current~~ standardized **state** contracting process.

C. Contract Approval Review Time

DGS strives to complete the review and approval process in ten working days or less.

Note: Expedited review is available in exceptional circumstances on request. ~~to the DGS/OLS Chief Counsel or an Assistant Chief Counsel.~~

D. In addition to the above requirements, the DGS Office of Legal Services asks individuals involved in the preparation and transmittal of documents to OLS to keep the following in mind:

1. Ensure that all information on the ~~STD 15 or~~ STD 215 is complete and specifically relates to the contract being submitted.
2. When completing the forms, review by an OLS attorney is made easier and more efficient if the form can be easily read. Reducing the type font in order to squeeze in an explanation is not recommended. If your narrative requires more space, enter "see attached" and provide a separate explanation. This way, the length of your explanation is not predicated on the size of the box, and it makes it easier to complete the contract review.
3. When amending a contract by replacing entire sections, review is made more efficient by highlighting the changes being made. For example, if replacing an entire scope of work that is contained in several pages and only a few items are being changed, please boldface or underline the actual changes. This will expedite the review process, and focus the attorney's review on the actual changes involved in the amendment.

4.09 • APPROVAL AND COMMENCEMENT OF WORK

(Rev 10/05)

A. Basic Policy

The basic state policy is that no contractor should start work until receiving a copy of the formally approved contract. The approval by DGS/OLS is the final, formal approval of the contract. The law provides that when DGS/OLS approval is required, contracts for services should not begin before receipt of approval; payment for services may not be made until the contract is approved by the DGS/OLS or, in the case of an exempt contract, until it is formally approved by the agency. See PCC §§ 10295, and 10335.

~~B. Ratification of Work Done Before Approval of the Contract~~

~~Any work done before formal approval of the contract in accordance with the contract specifications is deemed ratified by the agency at the time of formal approval of the contract. This provision recognizes that on occasion there may be an unavoidable lag time between the practical need for services and the formal approval of a contract. In some cases, this lag time will make it impossible to obtain formal approval before the services are actually needed.~~

(4.09 Approval and Commencement of Work – continued)**G.B.** Necessity of Time Management

Contracting staff are generally aware of the necessity for timely action and effective management of time during the contracting process. It is necessary to minimize the number of situations when the contractors start work before formal approval of the contract. For contracts submitted to DGS/OLS, if the contract term starts less than two weeks after submission, it would assist the review process if an explanation were furnished regarding the reason(s) for the late submission of the contract.

D.C. Consultant Contracts

The law does not permit consultants to start work before formal contract approval, except in an emergency, which is specifically defined in SCM 3.10.

When it is necessary for a consultant to start work before approval of the contract, the circumstances must be noted in the contract file as an emergency in accordance with PCC § 10371(d).

E.D. Warning to Contractors

1. Contracts are not valid unless and until approved by DGS/OLS if such approval is required by law. See PCC § 10335.
2. The contractor should be warned not to start work before receipt of the approved contract. The warning can be provided in the IFB or RFP, at the time of the award, or at the time the contract is sent to the contractor for signature.
3. If the contract is not approved and the contractor has begun work, the contractor may be considered to be a volunteer or the contractor may have to pursue a claim for payment by filing with the **Victim Compensation and Government Claims Board**. ~~Board of Control~~. The state has no legal obligation unless and until the contract is approved.

Note: Once the contract is approved, authorized services provided by the contractor can be paid from the beginning date of the contract.

4.10 • APPROVAL OF AMENDMENTS**(Rev 10/05)**

- A. Amendments should be approved by the same level of authority that the original contract was approved unless such authority has been specifically delegated. If the original contract was approved by DGS/OLS, any amendment must be approved by DGS/OLS except for the following:

1. If ~~the~~ **an** amendment only extends the original time for completion ~~or~~ **of** performance for a period of one year or less, the amendment is exempt from approval by DGS/OLS. **This exemption can only be used once.**
- ~~2. Multiple extensions of time may be exempted so long as the cumulative extension total does not exceed one year.~~
- ~~3. For consultant services contracts, the exemption for extension can be used only one time (PCC § 10335).~~
- ~~4.2. Extension of the contract cannot be used to circumvent the termination of availability of funds. (See GC § 16304, 2 CCR § 610, FY Budget Act.) Even though the extensions cited above are~~ **is** exempt from approval, **upon completion of the**

(4.10 A. Approval of Amendments – continued)

amendment, a fully executed copy of the amendment and a form ~~STD 15 or STD 215~~ explaining the reason for the extension must be sent to DGS/OLS if the original contract was subject to DGS/OLS approval.

- B. To obtain DGS approval of an amendment, the amendment should be submitted to DGS/OLS along with a ~~STD 15 or STD 215~~ **and all supporting documentation**. ~~and a copy of the original NCB approval authorization must be included when applicable.~~
- C. ~~The Contract Transmittal Form – STD 15 or STD 215, should focus on the changes made to the contract by that amendment and cite:~~
 - 1. ~~Authority to amend the contract.~~
 - 2. ~~Reason for amending the contract.~~
 - 3. ~~Any changes in meeting the DVBE goals.~~

DC. See SCM 3.09 for other information about amendments.

4.11 • APPROVAL OF WASTE RECYCLING AGREEMENTS

(Rev 11/99)

- A. Agreements for waste recycling programs similar to those of the Integrated Waste Management Board (IWMB) require prior approval of the IWMB (PCC §12165(d))
- A. A memorandum from the Integrated Waste Management Board (IWMB) approving the agreement must be transmitted with the contract when sent to OLS for approval. Contracts not accompanied by an approval memo from the IWMB will be returned to the submitting agency.

CHAPTER 4 - APPENDIX
DGS LEGAL
CONTRACT PACKAGE
(Rev 10/05)

Contract # _____

FY _____

Department/Program _____

Reviewer _____

Analyst _____

REVIEW DATE _____

DATE TO DGS LEGAL _____

Note: Highlighted items must be added to this contract and resubmitted to the Reviewer identified above for further review.

_____ STD 213 Contract

_____ Copy of IFB/RFP

_____ STD 215

_____ Copy of All IFB/RFP Responses

_____ Non-competitive bid **approval**_____ IFB/RFP Score Sheets
(including evaluators)

_____ Copy of Advertisement or STD 821

_____ Bid Opening Attenders List

_____ Notice of Intent to Award

_____ Reason for Lateness

_____ Multiyear Justification

_____ DVBE Evaluation and Documentation

_____ Cost Reasonableness (**Std 215**)

_____ Resolutions

_____ Drug Free Certification
(STD 21)

_____ AG Approval

_____ Insurance Certificate

_____ STD 19 Statement of Compliance

_____ STD 204

_____ CIWMB Approval
(recycling contracts only)

_____ Other Certifications (CCCs)

_____ G.C. 19130 Justification (**Std. 215**)

_____ Other Approval Needed

_____ Small business certification by OSDC

_____ Contract Registration # (eff. 7-1-03)

COMMENTS **ADDITIONAL KEY INFORMATION:** _____

5. COMPETITIVE BIDDING METHODS

5.00 • INTRODUCTION

This chapter provides recommended guidelines and procedures that should be used when seeking vendors and contractors to perform services and for consultant service contracts. Most of these guidelines are based on existing state policy and established practices; some are also based on statutory requirements.

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5.02 • STATUTORY AND REGULATORY POLICY REFERENCES**(Rev 4/04)**

- A. Public Contract Code Sections
 - 1. Disabled Veteran Business Enterprise participation (PCC § 10115)
 - 2. Service contracts (PCC §§ 10339 – (0345)
 - 3. Consultant services contracts (PCC §§ 10339 -10345)
 - 4. Conflict of interest by current and former state employees (PCC §§ 10410 - 11)
- B. Government Code Sections
 - 1. Target Area Contract Preference Act (TACPA) (GC §§ 4530 - 4535)
 - 2. Employment-Enterprise Zone Act (EZA) (GC § 7080)
 - 3. Local Military Base Recovery Area Act (LAMBRA) (GC §§ 7113.5 - 7114)
 - 4. Antitrust claims (GC §§ 4550-4554)
 - 5. Small business bidder preference (GC § 14838)
 - 6. Nondiscrimination compliance programs (GC § 12990)
 - 7. California State Contracts Register advertising (GC §§ 14825 - 14829.2)
- C. Title 2, California Code of Regulations
 - 1. Contract protest procedures (§ 1195)
 - 2. Application of small business, TACPA, EZA and LAMBA preferences and DVBE regulations (§ 1896 et seq.)

5.03 • FUNDAMENTAL RULES**(Rev 10/98)**

- A. An agency may not draft any competitive bidding document (i.e., IFB or RFP) in a manner that limits bidding directly or indirectly to any one bidder (PCC § 10339).
- B. Services may not be split to avoid the need to advertise or obtain competitive bids. In particular, a series of related services that would normally be combined and bid as one job cannot be split into separate tasks, steps, phases, locations, or delivery times to avoid adhering to a state law, policy, or departmental procedure.
- C. Sealed bids must be received at the place and by the time stated in the IFB or RFP. Bids received after the time stated in the solicitation document are not valid regardless of the circumstances causing the late submittal.
- D. The sealed cost bids for an IFB and RFP primary must be publicly opened (PCC §§ 10341 and 10344).

5.04 • STANDARD STATE CONTRACTING PROCESS

(Rev 3/03)

Effective July 1, 2000, the DGS/OLS adopted a new standard process for state contracting. This new standard process is based on a multiple year Pilot, wherein efficiencies and benefits were identified and incorporated into the process. Currently, agencies may use either the new standard contracting process based on the STD 213, STD 213A and STD 215 Forms, or the more familiar process based on the STD 2, STD 13 and STD 15 Forms. However, in the future the latter forms will become obsolete. The most notable difference between the processes is that only one complete package, and three signed STD 213s or STD 213A need be sent for OLS review, and the permissible use of "incorporation by reference" and model IFBs and RFPs for use by state agencies. Standard language and model agreements can be downloaded from the DGS/OLS web site at www.dgs.ca.gov/ols. It is advisable to periodically check the web site for future revisions.

5.05 • PRELIMINARY CONSIDERATIONS AND DECISIONS

(Rev 10/05)

Many of the questions and decisions needed to establish a sound basis for a final contract must be addressed by the contract users. They are the individuals most concerned with both quality and usability of what will be produced under the contract. They are the individuals best equipped to ask and to answer the main questions about the performance leading to the final service or product that prompts the need for the contract.

A. Primary Contracting Considerations

1. What type of service is needed and why and when is it needed?
2. Can services be provided within the agency? (If agency staff cannot provide the services, a justification consistent with Gov. Code § 19130 is required.)
3. Can another state agency provide the service through an Interagency Agreement?
4. If an outside contractor is to be used, how will the contractor be obtained? Will it be necessary to competitively bid, or does one of the exemptions to bidding apply?
5. Will another state agency be offered an opportunity to bid on the contract, and if so, the bid document should notice other bidders of this fact.
- 6-5. What type of contract is involved? Commodities, goods, IT Service, IT Consulting Service, non-IT Service, non-IT Consulting Service? See SCM Section 1.05 on proper classification of contracts.

Note: The Scope of Work is the key to a satisfactory contract. The level of satisfaction depends on fully assessing and defining the contract need. The determination of a level of quality sufficient to meet the need and guarantee the desired outcome and identification of the capability and qualifications required of a contractor to accomplish the outcome will produce a successful contract

5.06 • COMPARISON CHART OF BIDDING METHODS

(Rev 3/03)

Comparison of Bidding Methods
Table 5.1

Considerations	Invitation for Bid	Primary RFP	Secondary RFP
When this method is typically used	To obtain simple, common, or routine services that may require personal or mechanical skills. Little discretion is used in performing the work.	To obtain complex services in which professional expertise is needed and may vary. Where different methods and approaches may be applied during performance.	To obtain very complex and/or unique services in which professional expertise and methods may vary greatly. Creative or innovative approaches are needed.
Cost/value of services	\$5,000 or more	\$5,000 or more	\$5,000 or more
CSCR advertising	Yes. (See Note below.)	Yes. (See Note below.)	Yes. (See Note below.)
Bidders' conference	Optional. Held if necessary to clarify service needs.	Optional. Held if needed to clarify service needs.	Optional. Held if needed to clarify service needs.
How award is made	Lowest responsible bidder: public bid opening	Lowest qualified responsible proposer; public bid opening	Highest-scored responsible proposer; public bid opening
Oral Interviews	Not applicable.	Optional. Held if needed.	Optional. Held if needed.
What information is submitted	Bid form and other material deemed necessary by the awarding agency.	Narrative proposal and a separate envelope containing cost information.*	Narrative proposal, including a cost component, in one envelope
Statement of work (SOW) considerations	SOW is predeveloped.	Objectives, major tasks, and timelines are identified. Proposer offers detailed work plans, methods, etc.	Goals and objectives are stated. Proposer offers detailed work plans, approaches, methods, etc.

* If DVBE documentation contains dollar amounts rather than percentages, that information should be included in the cost envelope

Note: Exception: See SCM 5.80 B for contracts under \$100,000 awarded to a certified small business or DVBE.

(5.06 Comparison Chart of Bidding Methods - continued)

Table 5.1 (Cont.)

Considerations	Invitation for Bid	Primary RFP	Secondary RFP
How small business preference is applied	The cost bid of a certified small business is reduced for evaluation purposes by 5 percent of the lowest cost bid offered by a noncertified small business.	The bid of a certified small business is reduced for evaluation purposes by 5 percent of the lowest cost offered by a noncertified small business.	Certified Small business will have its points increased by 5% of the total points awarded to the highest scored non small business bidder.
Is TACPA/EZA/LAMBRA applied?	If the total contract is more than \$100,000 and the work site is not fixed.	If the total contract is more than \$100,000 and the work site is not fixed.	If the total contract is more than \$100,000 the work site is not fixed.
DVBE participation required?	Dependent on agency decision.	Dependent on agency decision.	Dependent on agency decision.

5.07 • DIFFERENCES BETWEEN IFBs AND PRIMARY RFPs

Rev (1/01)

The general differences are indicated in Table 5.2. To easily distinguish the two methods, different terminology is used. Generally, in IFBs the terms Bid and Bidder are used, and in RFPs the terms Proposal and Proposer are used, although the Public Contract Code uses them interchangeably.

Differences Between IFBs and Primary RFPs

Table 5.2

Invitation for Bid	Primary Request for Proposal
Bidders may need to certify only that they meet the IFB requirements. It is optional whether to collect a certification or bidder information.	Narrative proposals containing varying amounts of proposer information are usually required to be submitted.
Sealed bids or price quotes are submitted. A single-envelope or two-envelope process may be used.	Sealed cost proposals are submitted in separate envelopes from the narrative proposals.
A pass/fail determination is made for responsiveness to IFB requirements. This can be accomplished after bids are opened and read aloud.	Proposals are reviewed for responsiveness to RFP format requirements. Proposals may be rated or scored. Cost/price offerings of qualified proposers are opened and read aloud for responsible proposers.
Bidders' conferences are optional but are rarely needed.	Bidders' conferences are optional but are often held to clarify the services being sought.

(5.07 Differences Between IFBs and Primary RFPs – continued)

Table 5.2 (Cont.)

Invitation for Bid	Primary Request for Proposal
To obtain services valued at \$5,000 or more.	Same as for IFB.
IFBs are used to secure simple services calling for routine personal or mechanical skills. Work methods are standard, or little discretion exists in terms of how the work is performed.	RFPs secure complex services calling for technical and/or professional skills and expertise. The proposer uses discretion in applying various approaches or methods.
Bidder capabilities are not rated or scored. Bidders either pass or fail IFB requirements.	Proposer qualifications, capability, and experience may be scored on evaluation criteria stated in the RFP.
The statement of work (SOW) is clearly stated. Bidders are generally told what, how, when, and where work and services are to be done.	The SOW contains as much detail/depth as possible but may include an agency's needs, goals, and objectives. Proposers are relied on to recommend methods or approaches to meet an agency's needs.
Award is made to the lowest responsible bidder.	Same as for primary IFB.

5.08 • COMPETITIVE BIDDING OPTIONS

(Rev 10/05)

(Note: See ~~Executive Order D-55-02~~ and related Management Memo 03-10 **or most current.**) for modifications to information herein.)**A. A minimum of ~~±~~ three competitive bids or proposals are required unless one of the following applies:**

1. Emergency. The work or service is for the immediate preservation of the public health or welfare, or the safety or protection of state property (PCC §§ 1102 and 10340).
2. The contract is exempt from being competitively bid as listed in PCC 10348 and SCM Chapter 5.
3. Non-competitively bid exemption (NCB). The Director of DGS has approved exemption from competitive bidding because the state's best interests are better served by exemption. (SCM Chapter 5)
4. Governmental agency contract. The contract is with another state, local, or federal agency or with the University of California, the California State University, or a California community college or any of their auxiliary organizations (PCC § 10340).

Note: These contracts or interagency agreements cannot be used to circumvent or bypass the state's bidding requirements, SCM Chapter 1 and Chapter 3.

5. Community Based Rehabilitation Program (CRP). The exemption applies to contracts with workshops conducted in accordance with W&I Code § 19404, and which have been justified under GC Section 19130(b).

(5.08 A. Competitive Bidding Options - continued)

6. Services for which the State has entered into a master contract **(unless required by the rules of the master contract in the User Guide).**
 7. When the agency awarding the contract has advertised the contract in CSCR and has solicited all potential contractors known to the agency but has received less than three bids or proposals.
 8. ~~DVBE participation requirements apply to all contracts, even those exempt from competitive bidding.~~
- ~~B. Agencies may put a tiebreaker in the solicitation document indicating how the contract award will be made in the event of a tie. Examples of permissible tiebreakers are coin toss or other similar objective method. Such event must be observed by witnesses and ideally the affected bidders would be invited. See SCM 8.21 C for ties between certified small businesses and DVBEs.~~

Note: There is no requirement to award a contract if, in the opinion of the state agency, no bids or proposals were received containing a reasonable contract price or if there is another business-based reason not to make an award.

5.09 • REQUIRED LANGUAGE IN COMPETITIVE BIDDING**(Rev 10/05)**

- A. All competitive bid proposal packages ~~should~~ **shall** contain (as applicable):
1. Date, time, and place bids are due (PCC §§ 10341, and 10344).
 2. Small Business Preference Program information (GC § 14835).
 3. Conflict of Interest provisions (PCC §§ 10410, 10411).
 4. Corporate qualifications to do business in California (R&TC § 23101).
 5. Drug-free requirements (GC § 8350 et seq.).
 6. Statement of Compliance (GC § 12990(a - f), 2 CCR § 8113).
 7. Disabled Veteran Business Enterprise participation goals, if applicable (PCC § 10115 et seq.).
 8. Antitrust claims (GC §§ 4552, 4553, and 4554).
 9. TACPA preference, if applicable (GC § 4530 et seq. and 2 CCR § 1896.30).
 10. EZA (GC § 7070).
 11. LAMBRA (GC § 7118).
 12. Protest procedures (SCM 6.35).

Additional references: PCC §§ 10339, 10340, 10344, 10348.

Note: The general terms and conditions of the contract and any unique provisions should be included in the bid document to let bidders know the requirements.

5.10 • COMPETITIVE BIDDING ISSUES**(Rev 10/05)**

- A. ~~Documentation~~ **Advertising**. Potential bidders must be formally notified of the bid opportunity through CSCR advertisement, **unless an advertising exemption has been received. (approved Std 821)**
- B. Less than three bids. If three bids are not received, the state agency will prepare a complete explanation as to why less than three bids were received; provide a justification as to the reasonableness of the price; provide the names and addresses of the firms, or individuals specifically notified of the contracting opportunity; and retain this document in the agency's contract file. (PCC § 10340)

(5.10 Competitive Bidding Issues - continued)

- C. Preferences for certified small businesses, microbusinesses and non-small businesses subcontracting preference. There are preferences to be applied to eligible certified small businesses, microbusinesses and non-small businesses, which subcontract with at least 25% certified small businesses (See SCM 8.20 and 8.21). Additional preferences under TACPA and EZA and LAMBRA shall be granted as applicable when cost of the service will exceed \$100,000 and the work site will not be fixed by the terms of the contract. Exceptions for IT services, architectural and engineering services and situations involving multiple contract awards are noted in the cited regulations. Additional information on TACPA and EZA and LAMBRA can be obtained from the DGS Dispute Resolution/Preference Program Section (See 2 CCR § 1896 et seq. and SCM 8.)
- D. Information Technology (IT). In certain instances IT goods and services are exempt from competitive bidding (SAM § 5205, SCM 3).
- E. Once a contract is awarded, the solicitation has ended. If the Contractor awarded the contract fails to perform the contract, the agency cannot award to the second lowest bidder without re-bidding, or obtaining an NCB approval.

5.11 • INVITATION FOR BIDS**(Rev 4/04)**

- A. An Invitation for Bids (IFB) must be exact and clear to ensure that all bids received will be competitive as the result of all bidders bidding on exactly the same work or equipment, specifications, and contract obligations.

An IFB seeks an answer to the following:

“Here is exactly what we need to have done. Here are the qualification requirements, performance specifications, time frames, and requirements that must be met. How much will you charge us?”

- B. An IFB must indicate the specific requirements of the state. Timely bids are reviewed to determine which bidders meet the requirements indicated in the IFB.

For each specific requirement, a basic yes or no answer is required. There is no “fully,” “barely,” “almost,” or “exceeded” level of evaluation. After identifying which bidders are responsive to all requirements stated in the IFB, it is then a matter of determining which bidder is offering the lowest cost for its services. Bidders should not be relieved from their bids because of fraud, or due to mistakes they make in presenting the costs for their services.

Note: Fraud includes presenting false or misleading information with the intent to trick, misrepresent, or deceive. It also includes concealment or nondisclosure of information for the purpose of misleading.

- C. All bids may be rejected whenever the determination is made that the bids received are not really competitive, when the cost is not reasonable, or when the cost exceeds the amount expected. Although many agencies reserve the right to reject any bid, no bid may be rejected arbitrarily or without reasonable cause.

5.15 • REQUEST FOR PROPOSALS**(Rev 10/05)**

- A. A Request for Proposals (RFP) must be as precise as possible to ensure that all proposals are accomplishing the same goal. ~~See SCM 5.09 for the type of information to include in an~~

(5.15 A. Request for Proposals –continued)

~~RFP.~~—An objective evaluation procedure must be used to determine which proposers have complied with the RFP requirements and to whom the contract should be awarded.

- B. An RFP seeks an answer to the following:
- “Here is what we wish to accomplish. Here are the qualification requirements, performance specifications, time frames, and other requirements that must be met. How would you accomplish the job for us and for how much?”
- C. An RFP should not be used when the service or equipment to be hired is standard, routine, or common, or when there is a standard associated with the service or equipment to be hired. For example, the hiring of a pest-control firm to do routine exterminations should be accomplished through an IFB, not an RFP.
- D. There are two methods for evaluating proposals and awarding contracts (PCC § 10344):
1. Primary Method: By this method, the contract is awarded to the responsible and qualified proposer offering the lowest cost for its services. For more information on the primary RFP method, see SCM 5.20.
 2. Secondary Method: This method requires evaluation of proposals by an evaluation committee with the award made to the responsible proposer earning the highest score. For more information on the secondary RFP method, see SCM 5.25.
- E. Before soliciting proposals, agencies must determine which method of evaluation will be used in order to include the appropriate information in the RFP, as follows:
1. A comprehensive evaluation plan must be developed and finalized. All rating and scoring factors which are to be considered must be included, criteria for considering costs to the state must be developed, and the evaluation plan must provide for a fair and equitable evaluation of all proposals (PCC § 10344).
 2. All proposals and all evaluation and scoring sheets must be available for public inspection at the conclusion of the scoring process (PCC § 10342).
- F. When an evaluation committee is appointed:
- The ~~majority of the~~ voting members used in the selection process shall be from the agency soliciting the proposals or awarding the contract.
 - Private consultants may not be voting members of the committee. ~~Private consultants~~ **and** may only be used to provide clarification **or subject matter expertise** to the committee members.
 - If the contract is awarded by a state board or commission, the recommendations of an evaluation committee shall be considered advisory in nature, and the board or commission must make the ultimate decision unless statute expressly permits the board or commission to delegate that responsibility.

5.17 • PRIMARY RFP AND SECONDARY RFP DIFFERENCES

(Rev 3/03)

Table 5.3 outlines the differences between primary and secondary RFPs.

Table 5.3
Differences Between Primary and Secondary RFPs

Primary RFP	Secondary RFP
Services are complex, but not uncommon or unique.	Services are complex, uncommon, or unique.
Performance requires varying methods or approaches but not innovation or creativity. The methods and approaches used may not differ significantly from one proposer to another, which allows costs to be used as the deciding factor for making the award.	Performance requires unusual, innovative, or creative techniques, methods and approaches. The quality of expertise and approaches, methods, and innovation used may differ significantly from one proposer to another.
The statement of work (SOW) is fairly well defined in terms of services or functions that must be performed, as are the time frames that are required.	The SOW is less precisely defined and may contain only the agency's needs and goals or objectives that must be met.
Costs offerings are submitted in a separate sealed envelope apart from the narrative proposal.	Price may appear as a section within the narrative proposal and must be a significant factor. Price does not mean cost effectiveness.
Narrative proposals are reviewed, evaluated, and scored for compliance with format, content, and qualification requirements.	Narrative proposals are evaluated and scored. Oral interviews are optional. Passing points may be set to determine the finalists.
Cost proposals are not scored.	The cost component is either scored against criteria stated in the RFP or subjected to a formula to convert the quoted cost into score or point values.
Qualified proposals that are responsive to the RFP requirements will have their cost/price offerings publicly opened and read.	Cost offerings are not announced or publicly read.
Following the opening and reading of cost offerings, cost offerings are then adjusted for applicable small business, TACPA, EZA and LAMBRA preferences.	Cost offerings are adjusted for applicable small business, TACPA, EZA and LAMBRA preferences.
A certified small business receives an amount equal to five percent of the lowest cost offering submitted by a non-certified small business reduced from its cost offering.	A certified small business will have its total points increased by 5% of the total points awarded to the highest scored non-small business bidder.
Award is to the responsible proposer offering the lowest cost for its services.	Award is to the responsible proposer earning the highest overall score.

5.20 • REQUEST FOR PROPOSAL: PRIMARY METHOD**(Rev 3/03)**

- A. In addition to the requirements set out in SCM 5.09, the RFP must include a requirement that each proposer submit its proposal with the cost proposal and all cost information in a separate, sealed envelope (PCC § 10344).
- B. Proposals received as a result of the primary RFP method must be evaluated and the contract awarded in the following manner:
 - 1. Review all eligible proposals (i.e., those filed on time and in the manner prescribed) to determine which ones meet the format requirements and the standards specified in the RFP. Proposals meeting the minimum standards and format requirements can then be rated or scored. Proposal standards should be set so that every proposer deemed to meet the standards specified in the RFP could perform at the required level.
 - 2. The sealed envelopes containing the cost proposal for those proposals that meet the format requirements and standards shall then be publicly opened and read. The contract must be awarded to the lowest-cost responsible proposer.

5.25 • REQUEST FOR PROPOSAL: SECONDARY METHOD (POINT COUNT OR HIGH SCORE)**(Rev 4/04)**

- A. Use of the secondary RFP method should be limited to those instances in which agencies are seeking a unique solution to a problem or situation that cannot necessarily be resolved by the lowest bidder (i.e., when the methods, approaches, and procedures to be used in performing the work are of primary importance).
- B. When scoring a proposal, cost/value effectiveness and cost adequacy may be judged, evaluated and awarded points as part of the technical score, but this must be in addition to the cost points (PCC § 10344). Agencies should discuss the RFP with their assigned OLS attorney before soliciting proposals where cost points (dollars/actual price component) are less than 30% of the total points.

The following formula may be used for the award of cost points:

Lowest cost proposal is awarded the maximum cost points. Other proposals are awarded cost points based on the following calculation:

Lowest Proposer's Cost = (factor) X maximum cost points = cost points for other proposer
Other Proposer's Cost

EXAMPLE: Lowest cost proposal = \$ 75,000
Other proposal = \$100,000
30 cost points available`

(Lowest cost proposal) \$75,000 = $\frac{3}{4}$ X 30 = 22.5 cost points awarded to (Other
proposal) \$100,000 other proposal

- C. Proposals received as a result of the secondary RFP method must be evaluated and the contract awarded in the following manner (PCC § 10344):

(5.25 C. Request for Proposal: Secondary Method (point count or high score) – continued)

1. Review all eligible proposals (i.e., those that are received in the time and manner prescribed) to determine which ones meet the format requirements specified in the RFP
2. Those proposals that meet the format requirements shall then be submitted to an agency evaluation committee. The evaluation committee will evaluate and score proposals using the methods specified in the RFP. The contract must be awarded to the responsible proposer whose proposal is given the highest score by an evaluation committee.

5.30 • FORMS AND CERTIFICATIONS FOR COMPETITIVE BIDDING DOCUMENTS

(Rev 3/03)

By law, regulation, or DGS policy, various contracts are required to contain, by reference or attachment, certain forms and/or certifications. Therefore, potential bidders and proposers should be advised of these requirements when they inquire about contracting opportunities with the state.

A. Statement of Compliance:

A Statement of Compliance - form STD 19, or an equivalent certification, must be included in all bids or proposals submitted by contractors for nonexempt contracts of \$5,000 or more. Instead of including the Nondiscrimination Compliance Statement - form STD 19, in a bid document for the bidder's or proposer's signature, the bid document or bid form may contain the following certification:

Statement of Compliance:

The prospective contractor's signature affixed hereon and dated shall constitute a certification, under the penalty of perjury under the laws of the State of California, that the bidder/proposer has, unless exempted, complied with the nondiscrimination program requirements of Government Code section 12990 (a - f) and of Title 2, California Code of Regulations, section 8113. (See SCM 4)

Note: The Statement of Compliance is included in the document, "Contractor Certification Clauses" (CCC), found on the DGS/OLS website.

B. Small Business Preference Notification

Each agency in awarding contracts for the purchase of goods, for the lease or rental of goods with the option to purchase the same, for public works, or for the performance of services shall grant to qualified small businesses a preference according to applicable regulations. Each IFB and RFP shall, as applicable, contain information about the application of the small business preference and how to obtain such preference. To be granted such preference, qualified businesses must submit an application meeting all the requirements to the DGS/Office of Small Business and DVBE Certification no later than 5:00 p.m. on the date the bids will be opened (GC § 14835, 2 CCR § 1896.2 et seq.).

For specific instructions on how to apply the small-business preference to eligible bids and proposals. (See SCM 8) The small-business preference may not exceed \$50,000.

C. Antitrust Claims

1. The Government Code chapter on Antitrust claims contains the following definitions:
 - a. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the state or any of its political subdivisions or public

(5.30 C. 1. a. Forms and Certifications for Competitive Bidding Documents – continued)

agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

- b. “Public purchasing body” means the state or the subdivision or agency making a public purchase. (See Government Code section 4550)
2. The following antitrust provisions must be included in the bid documents:
 - a. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. (See Government Code section 4552)
 - b. If the awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid
 - c. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. (See Government Code section 4554)
- D. Corporate Qualification to do Business in California
(Note: The statement of Compliance is included in the document, “Contractor Certification Clauses” (CCC), found on the DGS/OLS website.)
 1. When contracts are to be performed in the state by corporations, the contracting agencies should obtain verification that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
 2. “Doing business” is defined in R&TC § 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
 3. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies may determine whether a corporation is in good standing by accessing the Office of the Secretary of State’s web site at www.ss.ca.gov.
 4. Contracting and approving agencies may obtain assistance from the Franchise Tax Board in evaluating a contractor’s claim of exemption. Inquiries should be directed to the Exempt Organizations Unit desk, telephone (916) 845-4171.
- E. Drug-Free Workplace Certification
(Note: The statement of Compliance is included in the document, “Contractor Certification Clauses” (CCC), found on the DGS/OLS website.)

(5.30 E. Forms and Certifications for Competitive Bidding Documents – continued)

DGS recommends including either a Drug-Free Workplace Certification - STD 21, in all bid documents or using the specific language in each bid document. (See SCM 7)

F. Insurance Requirements, If Applicable

DGS/Office of Risk and Insurance Management requires that proof of insurance, meeting the requirements specified in SCM 3, be submitted with each contract for services that will involve a hazardous activity.

DGS recommends placing a statement requiring proof of adequate insurance in applicable bid documents used to procure services that will involve a hazardous activity. Likewise, any agency that requires a certificate of insurance for any other reason (e.g., medical malpractice) should consider requiring proof of applicable insurance requirements in bid documents. Examples of service contracts involving hazardous activities can be found in SCM 3.12.

G. Target Area Contract Preference Act (TACPA)

Each IFB or RFP for goods or services, in which the cost is estimated to be in excess of \$100,000, except when the work site is fixed by the terms of the contract, should contain a provision applying work site and hiring preferences, as applicable, to eligible California-based firms. Bidders and proposers may apply for such preferences by means of a Target Area Contract Preference Request - STD 830S (for services) or STD 830G (for goods) (2 CCR § 1896 et seq., see also SCM 8). Contact DGS/Dispute Resolution/Preference Program Section for information on TACPA at (916) 375-4604 or (916) 375-4600.

H. Enterprise Zone Act (EZA)

Each IFB or RFP for goods or services in which the cost is estimated to be in excess of \$100,000, except when the work site is fixed by the terms of the contract, should contain a provision applying work site and hiring preferences, as applicable, to eligible California-based firms. The percentage preferences allowed for EZA are similar to those allowed for TACPA (2 CCR § 1896 et seq.). Bidders may apply for the EZA preference using the Enterprise Zone Act (EZA) Request Form Std. 831. Contact DGS Dispute Resolution/Preference Program Section for information on EZA at (916) 375-4604 or (916) 375-4600. An additional source of information on this topic is in GC § 7080 et seq. (See SCM 8)

I. Local Agency Military Base Recovery Area Act (LAMBRA)

Each IFB or RFP for goods or services in which the cost is estimated to be in excess of \$100,000, except when the work site is fixed by the terms of the contract, should contain a provision applying work site and hiring preferences, as applicable, to eligible California-based firms. For percentage preferences allowed for LAMBRA see GC § 7118. Bidders may apply for the LAMBRA preference using the Local Agency Military Base Recovery Area Act (LAMBRA) Request Form Std. 832. Contact DGS Dispute Resolution/Preference Program Section for information on LAMBRA at (916) 375-4604 or (916) 375-4600.

J. Statewide Disabled Veteran Business Enterprise (DVBE) Participation Goals

Each state agency is required to have DVBE participation goals in contracts for construction, professional services, materials, supplies, equipment, alteration, repair, and improvement (PCC § 10115 et seq.) except those services subject to Chapter 6 commencing with GC § 16850. Participation goals apply to the overall dollar amount expended each year by the awarding agency. Each agency is allowed to determine the dollar level and types of contracts that are subject to or exempt from DVBE goal participation.

(5.30 J. Forms and Certifications for Competitive Bidding Documents – continued)

If the contract is of a type or total dollar amount subject to DVBE participation in accord with departmental procedures or regulations, the bid document used to procure such services, should contain applicable DVBE participation instructions and forms and DVBE audit language. For information on DVBE participation goals and good-faith effort requirements, refer to applicable state agency policies, procedures, or regulations or the statutes on this topic. (See SCM 8)

K. Priority Hiring Considerations for Contracts with a Value in Excess of \$200,000

Every contract for services in excess of \$200,000 shall contain a provision requiring the contractor to give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under W&I Code § 11200 (PCC § 10353).

DGS recommends including the following paragraph or a similar provision in each bid document that will result in a contract award exceeding \$200,000:

If the resulting contract will have a total contract value of \$200,000 or more, the contractor is hereby advised that it will be obligated to give priority consideration in filling vacancies in positions funded by the resulting contract to qualified recipients of aid under Welfare and Institutions Code section 11200. This requirement shall not interfere with or require a violation of a collective bargaining agreement, a federal affirmative action obligation for hiring disabled veterans of the Vietnam era, or nondiscrimination compliance laws of California and does not require the employment of unqualified recipients of aid.

5.35 • WHAT TO INCLUDE IN AN RFP**A. The more thoroughly that a state agency communicates its specific needs, requirements, goals, and objectives in the RFP, the more complete, responsive, and acceptable the proposals received will be. RFPs should include:**

1. A statement of work that contains:
 - a. A clear, precise description of the work to be performed, services to be provided, problem to be solved, or the goals and objectives to be met
 - b. An explanation in realistic terms of what the proposer is expected to accomplish including any desired approach to the problem and the specific functions, tasks, or activities that must be performed, in their order of importance and probable sequence
 - c. Practical and policy information, technological requirements or specifications, and legal limitations, if any
 - d. Specific questions to be answered or issues to be addressed
 - e. Performance timelines or completion dates
 - f. Required quality control standards to be met, if applicable
 - g. A description of the items, products, or results to be delivered
 - h. The format and number of copies of the completed progress reports and final report, if applicable
 - i. The extent and nature of the assistance and cooperation from the state that will be available to the proposer
2. Proposal instructions should contain a description of the format that proposals must follow and the elements they shall contain. The factors to be used in proposal

(5.35 A. 2. What To Include In An RFP – continued)

evaluation and contractor selection may not be changed or added after the RFP has been distributed without adequate notice to all potential proposers through an addendum. RFPs must provide:

- a. Specifications, including:
 - Standards the agency will use in evaluating proposals
 - Information on how the state will select the winning proposal
- b. Time schedules, including:
 - Date to submit questions or seek clarification of the RFP
 - Date of Proposers' Conference, if applicable
 - Date on which the proposals must be submitted
 - Timetable the agency will follow in reviewing and evaluating proposals
 - Date of cost proposal opening
 - Date of award
 - Anticipated contract term, including commencement and completion dates
3. Notice of payment terms or restrictions, including:
 - a. Whether and to what extent progress payments will be allowed
 - b. Whether payments are subject to payment withholds
 - c. Penalties for late or inadequate performance
 - d. Known or estimated budgetary limitations on the contract price, if applicable
4. Applicable contract provisions, including:
 - a. Actual or sample contract language or boilerplate contract provisions that will appear in the resulting contract including the provisions printed on the back of the STD 2 Standard Agreement.
 - b. It is important to include any terms or provisions that will place a contingent liability on the contractor or affect the contractor's operating costs.
5. Requirements that prospective proposers must address or include in their proposal, if applicable, such as the following:
 - a. A description of the proposer's qualifications, including:
 - Proof that the proposer, if a corporation, is in good standing and qualified to conduct business in California
 - For proposers that are nonprofit organizations, proof of nonprofit status
 - Copies of current business licenses, professional certifications, or other credentials
 - Proof of financial solvency or stability (e.g., balance sheets and income statements for one year or more), as deemed applicable
 - A list of current or former references for whom the proposer has performed similar work
 - b. A brief list of similar types of contracts that were successfully concluded, with a sample of such work
 - c. A description of the lead personnel and anticipated supporting personnel to be employed during performance (by classification or title) and their qualifications to perform the work

(5.35 A. 5. What To Include In An RFP – continued)

- d. Identification of a project coordinator (recommended for all bid documents but required when consultants are sought)
 - e. Resumes for each major contract participant who will exercise a major policy, administrative, or consultative role in carrying out the services (required by law for consultant contracts)
 - f. An overall description of the techniques, approaches, and methods to be used in performing the services. For cost reimbursement contracts with consultants, the amount of time and manpower to be expended and the equipment and facilities to be utilized, if applicable
 - g. If subcontractors are contemplated, identification of those persons or firms, the portions and monetary percentages of the work to be done by the subcontractors how they were selected and why, resumes of each major subcontract participant, and a description of how subcontracted work will be controlled, monitored, and evaluated
 - h. The total cost of the project, with a detailed breakdown showing how the costs were determined, and the desired method of payment. The detailed budget breakdown may include:
 - Identification of position/classification titles funded
 - Salary rates or ranges
 - Percentage of time devoted to the work
 - Fringe benefits
 - Operating expenses
 - Travel and per diem expenses
 - Overhead or indirect costs
 - Subcontractors with the same type of cost details
 - Other costs
6. Identification of services provided on a flat fee, lump sum, or unit rate basis.

5.40 • GUIDELINES FOR CRITERIA AND CONSIDERATIONS IN EVALUATING RFPs

- A. The following are suggested criteria that may be used in evaluating proposals:
1. Does the proposing firm understand the agency's problem or needs?
 2. Can the proposer fit this work into its existing obligations?
 3. Is the approach to the problem, recommended method, and procedure reasonable and feasible?
 4. Do the expected results, outcomes, and deliverables appear to be achievable in a timely manner, given the approaches, methods and procedures proposed?
 5. Does the firm have the organization, management capability and competency, fiscal and personnel resources, and experience to perform the services being sought?
 6. Has the firm had experience performing work of a similar nature, size, and scope?
 7. Does the proposer's past experience complement the services being sought, or is the proposer's past experience appropriate to qualify the proposer to perform these services?
 8. What are the professional qualifications of the personnel that the firm will commit to the project?

(5.40 A. Guidelines for Criteria and Considerations in Evaluating RFPs – continued)

9. Did the proposer allocate sufficient staff resources?
10. Has the proposer addressed all goals, objectives, service demands, and required deliverables specified in the RFP?
11. Does the proposer appear to be able to handle and resolve unanticipated complications and delays without interrupting the delivery of services?
12. Are any proposed timelines for performance presented by the proposer feasible?
13. Did the proposer include plans that will show how performance will be monitored and measured to ensure that all services are successfully performed and that the objectives, goals, and requirements are met?
14. Does the proposer appear to have the capacity to manage fiscal resources responsibly?
15. Does the proposer have sound fiscal, accounting and cost-monitoring or budget-monitoring procedures in place?

5.45 • TIE BIDS**(New 10/05)**

Agencies may put a tiebreaker in the solicitation document indicating how the contract award will be made in the event of a tie. Examples of permissible tiebreakers are coin toss or other similar objective method. Such event must be observed by witnesses and ideally the affected bidders would be invited. See SCM 8.21.C for ties between certified small businesses and DVBEs.

5.60 • TIME FOR COMPLETION OF THE COMPETITIVE BIDDING PROCESS**(Rev 3/98)**

- A. The bidding process often takes three to eight months from the time the advertisement is placed until the award is made. This time frame does not take into account internal approval steps or delays caused by protests. Resolution of protests may add a delay of one to three months.
- B. The time needed to complete a bid proposal process will depend on the type of competitive bidding method used, the complexity of the services required, the number of bids or proposals received, whether a bidders'/proposers' conference is held, whether DVBE participation is required, whether protests are received, and other factors.

5.65 • POSTING AND NOTIFICATION REQUIREMENTS**(New 11/99)**

- A. RFP. After selecting a bidder for possible contract award under an RFP (Primary or Secondary):
 1. The agency must post, in an area accessible to the public, a letter of intent to award (PCC § 10345)

Note: Agencies may post the letter of intent on their Internet Homepage in addition to, but not in lieu of, the public posting.

2. The contract cannot be awarded for a period of 5 working days (starting the day after posting), during which time the agency must allow all bidders access to all the bid information including all responses and score sheets used in the evaluation (PCC § 10345).

(5.65 Posting and Notification Requirements – continued)

- B. IFB. After selecting a bidder for possible contract award under an IFB:
1. The agency must post, in an area accessible to the public, a letter of intent to award if requested in writing by any of the bidders (PCC § 10345).
 2. If the lowest bidder is not being awarded the contract, the low bidder must be notified of that fact five working days prior to contract award. The notice should also include the reason why the lowest bidder is not being awarded the contract.
 3. If the agency is awarding to the lowest responsible bidder, and no requests have been made to publicly post a letter of intent, the agency may award the contract without delay.

**5.70 • NON-COMPETITIVELY BID (NCB) CONTRACT JUSTIFICATION
(Rev 11/04)**

An NCB transaction (formerly “sole source”) is a contract for goods or services or both when only a single business enterprise is afforded the opportunity to provide the specified goods or services.

- A. Executive Order on NCB
- The Governor’s Executive Order, D-02-55, issued effective May 20, 2002, rescinded the previous sole source Executive Order W-103-94 and all management memos related to that Executive Order.
- B. Information detailing the process to obtain an approved NCB (non-competitively bid) contract award may be found at www.dgs.ca.gov/pd.
- C. A non-competitively bid contract justification is required unless specifically exempted by statute or policy. (See e.g. SCM 5.80)
- D. A contract cost justification which addresses the appropriateness or reasonableness of the contract cost, is also required if the contract is exempt from the NCB process, or if fewer than three competitive bids or proposals have been received. When the contract is submitted to DGS/OLS for approval, the supporting documents should address the following factors:
1. The effort made by the awarding agency to solicit competitive bids, if appropriate;
 2. Cost information (budget), which is in sufficient detail to support and justify the cost of the contract;
 3. Cost information for similar services (any differences between the proposed services and similar services should be noted and explained);
 4. Special factors affecting the costs under the contract; and
 5. An explanation of why the awarding agency believes the costs are appropriate.

**5.75 • ADVERTISING STATE-CONTRACTING OPPORTUNITIES
(Rev 10/05)**

- A. Contracts of \$5,000 or more must be advertised in the CSCR, before the contracting process begins. Contracts awarded as an NCB, and amendments that require an NCB approval will be published in the CSCR by DGS/Procurement Division as part of the NCB approval process. No agency action is required to advertise the NCB approval.
- B. Certain contracts may be exempted from the advertising requirement or exempted as NCB contracts. See SCM 5.80 (GC § 14825 et seq.; PCC § 10340)

(5.75 Advertising State-Contracting Opportunities – continued)

- C. Advertising procedures are as follows:
1. Advertising in the CSCR - The agency may submit the advertisement using Procurement Division's Internet Web page (www.pd.dgs.ca.gov), or submit Form STD 815, to DGS/Business Development Unit (contact Mark ~~C~~ Anderson at (916) 375-4582 or marc.anderson@dgs.ca.gov).
 2. DGS charges a fee for each ad that appears in the CSCR. There is an additional fee for ads that are not submitted electronically.
 3. If DGS/Procurement Division approves a form STD 821 for an advertising exemption, DGS will publish a notice of exemption in the CSCR.

Note: Government Code section 14838.5 and 14838.7 eliminates advertising requirements for certain contracts awarded to certified small businesses and DVBES. See SCM 5.80 ~~BC~~, for specific information.

5.80 • CONTRACTS EXEMPT FROM ADVERTISING IN THE CSCR AND/OR COMPETITIVE BIDDING.

(Rev 10/05)

- A. Re-bids: Agencies conducting a re-bid need not obtain an approved Exemption from Advertising or re-advertise the contract opportunity in the CSCR, if ~~the re-bid occurs~~:
1. **The re-bid occurs** ~~W~~within three (3) months of the publication of the original CSCR advertisement;
 2. Notice of rebid is provided **to** persons who requested the original solicitation package; **and**
 3. ~~There is~~ No material change to **the** bid.
- B. The following contracts are not required to be advertised in the CSCR, nor are they required to be competitively bid: (These exempt contracts do not need NCB justification (STD 821) approval.) (GC § 14825; PCC § 10348)
1. Contract with a Governmental Agency:
Contracts or agreements with another state, local, or federal agency; the University of California, the California State University, or a California community college or any of their auxiliary organizations; or an organization acting as a governmental agency under a joint powers agreement.

Note that these contracts or interagency agreements cannot be used to circumvent the state's bidding requirements. (See SCM 3.06)

2. Contract Amendments:
 - a. An amendment to a contract that only extends the original time for performance for a period of one year or less.
 - b. Amendments to existing contracts under the same terms and the same or lower rates, where a protest or other legal action delays the award of a new contract. These amendments should only last during the period the protest or legal action is pending until a new contract can be executed, but in no case shall the amendment extend beyond six months.

(5.80 B. 2. Contracts Exempt From Advertising In The CSCR and/or Competitive Bidding – Cont.)

- c. Amendments to an existing **competitively bid** contract ~~was and~~ **if** the additional years or additional tasks were anticipated and evaluated in the IFB/RFP.
- d. Amendments to an existing **competitively bid** contract if the original contract did not allow for additional years:

An approved NCB is not required for the first amendment, if the amendment adds no more than 30% of the original contract value, not to exceed \$250,000, and there is no change to the scope of work.

- e. **Amendments to an existing contract to correct incidental errors such as: state's clerical error in transposition of numbers from bid response to contract, typographical errors in a contract number, name, or address, or change in or omission of a contact name or phone number.**

- 3. The specific types of contracts listed below in (a) through (m ~~s~~) do not require advertisement in the CSCR; they are not required to be competitively bid, and they do not require an approved NCB:
 - a. Emergency contracts which are necessary for the immediate preservation of life or state property;
 - b. Contracts for the work of services of a state, local or federal agency, the University of California, the California State University, a California community college, a foundation or auxiliary organization incorporated to support the universities and colleges, or a Joint Powers Agency;
 - c. Services for which the state has entered into a master service agreement;
 - d. Subvention and local assistance contracts as defined in SCM 3.17
 - e. Maintenance agreements for equipment that is under documented warranty, or where there is only one authorized or qualified representative, or where there is only one distributor in the area for parts and services, under \$250,000.00 per year.
 - f. Contracts for designated contractors that have been selected by a federal, state, city, county, or other regulatory entity, usually through a competitive process to perform a service in a specific geographical area (e.g., ~~ambulance service calls~~, garbage, refuse, etc.);
 - g. Public entertainment contracts for state-sponsored fairs and expositions;
 - h. Contracts for which only per diem and travel expenses are paid not to exceed \$5,000 and there is no payment for services rendered;
 - i. Contracts solely for the purpose of obtaining expert witnesses for litigation;
 - j. Contracts for legal defense, legal advice, or legal services by an attorney or the attorney's staff;
 - k. Contracts with business entities operating Community Based Rehabilitation Program (CRP), that are justified under one of the exceptions in GC § 19130(b), and that meet the criteria established by Welfare and Institutions Code Section 19404. Note: Contracts with CRPs that are justified under GC § 19130(A), are required to be competitively bid;
 - l. Contracts that can only be performed by a public entity as defined in Unemployment Insurance Code Section 605(b);

(5.80 B. 3. Contracts Exempt From Advertising In The CSCR and/or Competitive Bidding – Cont.)

- m. Contracts for conference or meeting facilities, including room accommodations for conference attendees, not to exceed \$250,000.00.
- n. Contracts for ambulance services (including but not limited to 911) when there is no competition because the contractor is designated by a local jurisdiction for the specific geographic region. (Management Memo 05-04.)**
- o. Contracts for emergency room hospitals, and medical groups, physicians, and ancillary staff providing services at emergency room hospitals, when a patient is transported to a designated emergency room hospital for the immediate preservation of life and limb and there is no competition because the emergency room hospital is designated by a local emergency medical services agency and medical staffing is designated by the hospital. This exemption covers only those services provided in response to the emergency room transport. (Management Memo 05-04.)**
- p. Contracts with health maintenance organizations (HMOs) through a cooperative agreement with the Centers for Medicare and Medicaid Services (CMS) to pay monthly premium payments for medical/Medicare eligible members, where services are essential or necessary for health and safety.**
- q. Proprietary subscriptions, proprietary publications and/or technical manuals regardless of media format, up to \$250,000. This includes access to pre-existing proprietary research data through a non-IT services contract.**
- r. Rental of proprietary postage meters if they are interfaced and intermembered with existing mailing equipment and there is only one authorized manufacturer's branch or qualified dealer representative providing services for a manufacturer in a specified geographical area. This exemption applies only in circumstances where annual postage meter rental services are less than \$100,000.**
- s. Departmental memberships in professional organizations. Note: Memberships for represented employees are governed by applicable collective bargaining agreements and memberships for non-represented employees are governed by Department of Personnel Administration rules. (See SCM section 3.23.)**
- 4. Contracts for transportation services under \$5000 pursuant to a Transportation Rate Agreement (TRA), executed by DGS Procurement Division, where no additional services or additional requirements are requested beyond the normal provisions of the TRA.
- C. Contracts awarded to certified small, business, micro-business or disabled veteran-owned businesses are exempt from advertising under the following conditions (GC §§ 14838.5 and 14838.7):
 - 1. The contract is awarded to a certified small businesses, micro-business or disabled veteran-owned business,
 - 2. The contract award is greater than \$5,000 and less than \$100,000 and the project amount for construction contracts as specified in PCC § 10105 and
 - 3. Quotes were received from at least two certified small businesses **or** micro-businesses; or **two certified** disabled veteran-owned businesses, ~~or any combination thereof.~~ The small business preference is not applicable under this method.

5.85 • MULTIPLE AWARDS

Agencies may award multiple contracts through a bidding process when there is statutory authority to do so or when there are a variety of services or locations involved.

An agency must have clear, concise descriptions of the work to be performed or goals and objectives to be reached. The number of awards must be identified. A clear objective standard on how awards will be made must be given in the bid documents. Bidders should be given sufficient information to be able to understand what is to be accomplished and to be able to budget accordingly.

5.90 • INFORMAL COMPETITION

(Rev 4/04)

When services are required and the maximum contract amount is below \$5,000.00, agencies should conduct a market survey of vendors and have them submit unsealed price quotes. There is no limit on the number of vendors that may be solicited. This process may be done by telephone, writing, or fax.

5.95 • ~~PCC SECTION 6611 NEGOTIATION AUTHORITY~~

(Rev 4/04)

~~PCC Section 6611 provides that the Department of General Services may negotiate DGS contracts in certain defined situations. The Director of the Department of General Services has issued PCC section 6611 negotiation guidelines and procedures in Administrative Order 04-03~~

6. CONTRACT AWARD PROTESTS

6.00 • INTRODUCTION

(Rev 10/05)

This ~~The~~ chapter explains the protest process covered in this chapter applies only to regarding services or consulting services contracts that are awarded through an Invitation for Bid (IFB) or Request for Proposal (RFP) process.

Legal references: PCC §§ 10341 - 10345 and ~~Title 2 CCR~~ California Code of Regulations §§ 1195 - 1195.6.

Some information about the rules to be followed in deciding a protest may be helpful. It is generally accepted that the one challenging the decisions of an administrative agency bears the burden of proof of its charges that the awarding agency has committed an error in the bid award process sufficiently material to justify invalidation of its proposed award, or that its decisions are lacking a rational basis and are, therefore, arbitrary and capricious. An example of a material deviation would be, among others, failure of the awarding agency to follow pertinent state statutes and regulations or the provisions of its own bid document. When scores of an Evaluation Committee are at issue, more than the opinion of the protestant that scores should have been different, or that different scores could have been awarded based on the same information, is required to invalidate scoring decisions. In view of these parameters, the focus of the reviewing authority (here, DGS) is usually whether the protestant has met its burden of proof that the awarding agency has committed a material error in the conduct of the bid award process.

6.01 • TABLE OF CONTENTS (Rev 10/05)

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6.02 • GROUNDS FOR PROTEST

(Rev 10/05)

A. Those who may protest are as follows:

1. For IFBs, the lowest responsible bidder meeting the specifications, ~~if not awarded contract.~~ **for the contract.**
2. For RFPs, any proposer who claims ~~he/she would have been eligible for the award of the contract if the agency had scored his or her proposal correctly or if the agency had correctly followed the procedures specified in Public Contract Code.~~ **that the State agency failed to follow the procedures specified in either subdivision (b) or (c) of Public Contract Code section 10344.**

B. There is no basis for protest if the awarding agency rejects all bids or proposals, based on the interests of the state.

The protest process covered in this chapter applies only to services or consultant services contracts that are awarded through an IFB or RFP process. The State Board of Control hears protests involving the procurement of goods, telecommunications, and IT goods and services. (See PCC § 10345)

6.03 • PROTEST EXCLUSIONS

(Rev 10/05)

Under the following circumstances, there is no jurisdiction for the DGS to consider a protest if:

- A. The protestant was not a bidder or proposer. The only recourse in that case is through the civil courts.
- B. The protestant has not alleged that it was the lowest responsible bidder or the highest-scored proposer.
- C. The protestant is not in a position to make a supportable assertion that it was the lowest responsible bidder or should have been the highest-scored proposer.
- D. The protest was not submitted timely.
- E. The grounds for the protest do not meet the permissible grounds stated in the PCC.
- F. The contract award is for a type of contract not subject to the protest procedures. This category includes contracts for **the construction, alteration, improvement, repair or maintenance of real or personal property; goods or commodities and** ~~maintenance, modification, and so forth of real or personal property, including equipment (may be a public works contract); and~~ contracts for professional **architecture or engineering** services under GC § 4525. ~~unless both parties agree to confer jurisdiction on the department.~~

6.04 • ROLE OF DGS IN CONTRACT PROTEST HEARINGS

(Rev 10/97)

If the protest is based on permissible grounds, DGS will decide the protest and prepare a written decision. Following confirmation by staff that legal prerequisites have been met for a protest, the Director of DGS appoints a hearing officer who will:

- A. Determine whether to review and decide the issues by written submission or public hearing.
- B. Render a written decision within 30 days of the final submission of evidence.

6.05 • PROTEST AFFECTING VITAL SERVICES

(Rev 3/03)

If a protest is filed and cannot be resolved before the need for vital services occurs, the agency may extend an existing contract for up to six months at the same or lower rates. (See SCM 5.80) If the period extends past 6 months, approval by DGS/OLS is required. If there is no existing contractor or if the contractor does not wish to continue, an NCB may be obtained for a limited period until the protest is resolved.

6.10 • PROCEDURE FOR PROTESTING AN AWARD

(Rev 10/05)

A. An contract award may not be made until one of the following occurs:

1. (IFB process) At least ~~Five~~ working days before making the contract award, the agency must notify the lowest bidder that the contract is going being awarded to another bidder. The notification must be by either telegram, ~~fax~~ facsimile transmission, overnight courier, Internet transmission or personal delivery.
2. (IFB process) On written request from any bidder, the awarding agency shall must post a public notice of the proposed contract award in a place accessible by the general public, including any Internet site identified in the IFB at least five working days prior to awarding the contract. ~~intent to award the contract at least five working days before making the award.~~
3. (RFP process) ~~At least five working days before awarding a contract,~~ the agency shall must post a public notice of intent to award the contract. the proposed contract award in a place accessible by the general public, including any Internet site identified in the RFP for at least five working days prior to awarding the contract.

~~B. An agency should, in the solicitation document (IFB/RFP), inform all bidders of the protest procedures. (See SCM 5.09)~~

~~GB.~~ Inspection of bids is permitted as follows:

1. After bid opening, all bids shall be available for public inspection (IFB process).
2. ~~After proposals are evaluated, and notice of intent to award has been posted, all proposals shall be available for public inspection (RFP process).~~ All proposals and all evaluation and scoring sheets shall be available for public inspection at the conclusion of the committee scoring process (RFP process).

~~DC.~~ There are time limits in which to file a protest. A protest must be filed with the agency and DGS after notice of intent to award the contract, but before the actual award.

~~ED.~~ The contract award is held up when a protest is received by DGS or the agency. The agency informs DGS of the written protest, or DGS informs the agency that the award is protested. Once a protest is filed ~~The~~ contract may not be awarded until the protest is withdrawn or DGS has rendered a decision.

~~FE.~~ After filing a protest, the protestant has five calendar days to file a detailed written statement of the protest grounds if the original protest did not contain the complete grounds for the protest.

~~GF.~~ DGS's internal processes are as follows: Upon receipt of a protest, DGS/Office of Legal Services (OLS):

(6.10 F. Procedure For Protesting An Award – continued)

1. DGS/Office of Legal Services (OLS) assigns an attorney to review the protest to determine whether DGS has jurisdiction. **Sends the protestant an acknowledgement letter which includes copies of the protest statutes and regulations and informs the protestant that there is a five calendar day limit for filing a full and complete written statement specifying the grounds for the protest.**
 2. OLS sends the protestant an acknowledgment letter within 24 hours of receiving the protest and notifies the agency of the receipt of the protest. The letter either:
 - a. Notifies the protestant of the five calendar day limit for filing the required written statement concerning all the grounds of the protest; or
 - b. Informs the protestant that DGS has no jurisdiction over the protest.

Faxes to the awarding agency a request for general information regarding the proposed contract and agency contact person. The agency should complete and return the form to OLS within 24 hours. Failure to promptly complete and return the form will delay the protest process. In addition, if the agency is aware of some reason that the protest should not go forward, this would be communicated to OLS at this time (See SCM 6.03).
 3. OLS requests information from the awarding agency about the intended award. If the agency is aware of some reason that the protest should not go forward; this would be communicated to OLS at this time. (See SCM 6.03) **Reviews the protest to determine whether DGS has jurisdiction. If OLS does not have jurisdiction, the protest is denied.**
 4. **Assigns a Hearing Officer to the protest. The Hearing Officer determines whether the protest will be resolved by written submission or public hearing.**
 - a. **Written Submission Process: OLS sends a Hearing Notice to all interested parties, setting the due date for written submissions.**
 - b. **Public Hearing Process: OLS sends a Hearing Notice to all interested parties of the date, time and place of the hearing at least five calendar days before the hearing date. The Hearing Notice will also include a due date for written submissions. OLS will arrange for a court reporter for the hearing.**
- H. On receipt of the detailed written statement from the protestant, OLS takes the following action:
1. OLS requests the awarding state agency to forward copies of pertinent documents, including the IFB or RFP evaluation sheets, and scoring criteria.
 2. OLS forwards the available protest material to the hearing officer, including:
 - a. The bid protest
 - b. Acknowledgment letter
 - c. Detailed written statement of the grounds for protest
 - d. The bid documents (IFB or RFP)
 - e. Copies of the applicable laws and codes
- I. A protest is evaluated, and a protest hearing format is determined.

(6.10 I. Procedure for Protesting an Award – continued)

1. ~~If the hearing officer determines that the protest is clearly insufficient on its face, without merit, or outside DGS jurisdiction, the protest is denied.~~
 2. ~~If the protest is permissible and the hearing officer determines that the protest should be resolved by written submissions, then OLS sends notices to the interested parties, including the proposed awardee, that the protest will be decided through reviewing submissions of written material to support each party's position and sets the date for submission thereof. Copies of submissions must be sent to all interested parties.~~
 3. ~~If the protest will be resolved by hearing, then: DGS notifies all interested parties of the date, time, and place of the scheduled hearing at least five calendar days before the hearing date. If possible, OLS will provide a 10 working day advance notice. The notice will establish the date on which any written submissions and accompanying documents are due. Copies of all documents must be sent to all interested parties.~~
- J. ~~Hearing procedures include the following:~~
1. ~~The hearing officer may, with proper notification, postpone or reschedule the hearing or the date written submissions are due.~~
 2. ~~OLS will arrange for a court reporter for the hearing.~~

6.15 • PUBLIC HEARING GUIDELINES**(Rev 10/05)**

~~When a hearing is to be held, the hearing officer presides. The following guidelines apply:~~

- A. The hearing is conducted as a fair hearing.
- B. Informal procedures are followed.
- C. No oath is given.
- D. Witnesses and participants are advised to be truthful, accurate, and to the point.
- E. Liberal rules of evidence apply.
- F. Comments must be relevant to the protest issues.
- G. Statements are may be allowed from the interested parties, their witnesses, or authorized representatives.
- H. Cross-examination is may be permitted at the discretion of the hearing officer. ~~if it is deemed helpful to the resolution of protest issues.~~
- I. All interested parties are given the opportunity to present their positions.

6.18 • DECISION ON THE HEARING**(Rev 10/05)**

The hearing officer's decision is a final administrative decision based on the record produced. ~~The hearing officer must decide whether the protestant demonstrated that the allegations of the protest were true. The decision will recite the basis for the hearing officer's decision. DGS has no jurisdiction to consider any appeal to the hearing officer's decision.~~

6.19 • COSTS OF THE PROCEEDING

- A. All the costs of the protest proceeding are charged to the state agency involved.

(6.19 Costs of the Proceeding – continued)

- B. DGS arranges for all hearings to be recorded by a hearing reporter. Any interested party may arrange with the reporter to have a transcript prepared at the party's cost.

6.30 • PROTESTS ON OTHER TYPES OF SOLICITATIONS**(Rev 10/05)**

- A. Protests about contracts for commodities, telecommunications, and IT goods and services are made to the ~~Board of Control~~ **Victim Compensation and Government Claims Board**.
- B. Protests about contracts for public works, grants, A&E services, repair maintenance of personal property, or any other type of solicitation not specifically covered by another statute may be heard by DGS if both parties agree to the jurisdiction.

6.35 • NOTIFICATION OF THE RIGHT TO PROTEST**(Rev 3/03)**

- A. Agencies should include information for protesting the award of contracts in all IFBs and RFPs. This should advise protestants' that a detailed, written statement of protest, including the IFB/RFP number, and the name of the state agency involved and the agency contract person, should be submitted to both of the following:
- Department of General Services
Office of Legal Services
Attention: Protest Coordinator
707 Third Street, 7th Floor, Suite 7-330
West Sacramento, CA 95605
FAX: (916) 376-5088
 - The awarding agency
- B. Protests may be sent by regular mail, fax, courier or personal delivery. Protestants should include their fax numbers if they have one.

6.40 • MINIMIZING PROTEST EXPOSURE**(Rev 10/05)**

To minimize protest exposure and to enhance the likelihood of prevailing at a hearing, the agency should ensure that:

1. All solicitation packages are prepared with the appropriate clauses, phrases, and documents, and each is in compliance with all statutory and policy requirements.
2. All solicitation packages are written with clear and easily understood instructions.
3. Evaluators are carefully instructed on the evaluation approach to be used.
4. Sound decisions are made when determining a bidder's responsiveness to IFB or RFP requirements.
5. All bidders are treated fairly and impartially.
6. All bidders are given access to identical information and facts about the bid documents, statement of work, and qualification requirements.
7. The waiver of immaterial defects in any one bid or proposal does not unduly prejudice other bids or proposals or affect the price.

(6.40 Minimizing Protest Exposure – continued)

8. Bidders are given timely and prompt access to all applicable IFB or RFP evaluation materials following the posting of a notice of intent to award.
9. All inquiring bidders are informed of the reasons their bids or proposals are deemed nonresponsive. ~~or are not selected for the award.~~